IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

-

WRIT PETITION NO : 16808 of 2002

Between:

M. Ashok Kumar S/o Kottaiah
R/o Warangal

..... PETITIONER

AND

1 State Bank of India Rep. by Chief General Manager,
Local Head Office, Hyderabad.
2 The General Manager (Dev. & Per. Banking)

State Bank of India, Local Head Office, Hyderabad.
3 The Asst. General Manager (Dev. & Per. Banking)

State Bank of India,
Local Head Office, Hyderabad.
4 The Branch Manager, State Bank of India,
Battala Bazar Branch, Warangal. **.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or Direction, more particularly one in the nature of Writ of Certiorari calling for the records, relating to the issuance of the Circular Letter No.DO/P&HRD/75/2002-03 dt: 12-7-2002 from the file of the 1st respondent and after persuing the same quash the said Circular dt: 12-7-2002 by declaring it as arbitrary, discriminatory, illegal and voilative of the principles of natural justice and consequently direct the Respondents to issue forthwith posting orders to the Petitioner in the post of Junior Management Grade Scale-I duly fixing his pay in the said post w.e.f. 1-8-2000 in terms of the Circular Letter No.LHO/CDO/PER/P&C/109/2001-02 dt: 18-3-2002 as has been in respect of other similarly situated Selected candidates in the final list for the said post, and with all other consequential benefits, monetary and otherwise and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.V.JAGAPATHI

Counsel for the Respondents: MR.K.SRINIVASA MURTHY

The Court made the following:

ORDER:

The writ petition is filed assailing the circular letter No.DO/P&HRD/75/2002-03, dated 12-07-2002, as illegal and arbitrary and direct the respondent-Bank to issue forthwith posting orders to the petitioner in the post of Junior Management Grade Scale-I, duly fixing his pay, with effect from 01-08-2000.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner was initially appointed as Clerk-cum-Cashier in the State Bank of India on 17-03-1979. While he was working as Clerk-cum-Cashier in Waddepally Branch, Warangal District, in the year 1984, criminal proceedings were initiated against the petitioner and the petitioner was kept under suspension with effect from 20-01-1989. The C.B.I. has filed charge-sheet on 18-06-1991. Finally, the Special Judge for C.B.I. cases, Hyderabad, by judgment, dated 05-10-1993, acquitted the petitioner for all the charges levelled against him. The first respondent issued order dated 21-03-1994 reinstating the petitioner into service, without prejudice to the Banks right to take appropriate disciplinary action for the lapses committed by him. The petitioner has joined into service on 23-03-1994. On a representation made by the petitioner, the first respondent by letter dated 06-02-1998 fixed his pay excluding the period of suspension and intimated to the fourth respondent that no arrears

should be paid to him for the suspension period from 24-11-1989 to 22-03-1994. Aggrieved by the said letter, the petitioner filed W.P.No.4195 of 1998 to treat his suspension period from 24-11-1989 to 22-03-1994 as the period spent on duty with full salary and allowances by declaring that he is entitled for consequential benefits. Since the issues involved both in the Departmental Proceedings and in the criminal proceedings are one and the same, conducting departmental enquiry on the very same issues is impermissible under law. This court by order dated 27-04-1998 in W.P.M.P.No.9840 of 1998 in W.P.No.4195 of 1998, granted interim stay of all further proceedings in pursuance of the order dated 17-03-1998 issued by the first respondent.

While the matter stood thus, the petitioner has applied for promotion to the post of Junior Management Grade Scale-I (for short "JMGS-I") Officer. He was issued a hall ticket and he was permitted to appear for the written test held on 20-01-2002 and he was also declared qualified in the written test. The candidates, who have qualified in the written test, were called for interview held on 02-03-2002 and he was selected for promotion to the said post by a duly constituted Selection Committee. The first respondent vide circular dated 18-03-2002 communicated the final list of the selected candidates for promotion from clerical cadre to JMGS-I cadre w.e.f. 01-08-2000, which was prepared according to the merit, and in that list the name of the petitioner was shown at serial No.17. According to the instructions in the said circular, the selected candidates will be on probation for a period of one year from the date they report for duty and they will be confirmed with retrospective effect from the date of joining subject to their satisfactory completion of the probation period. The circular of the first respondent dated 18-03-2002 was communicated to all the Branch Managers in Hyderabad Circle, but the same was not communicated to the petitioner.

He further submits that the name of the petitioner was deleted from the

attendance register of clerical staff and he was entrusted with the duties of an Officer and as such he is discharging his duties as an Officer in the State Bank of India.

He further submits that on 30-08-2002, the fourth respondent intimated to the petitioner that he received a circular dated 12-07-2002, where under the name of the petitioner was cancelled from the selection list on the sole ground that disciplinary proceedings initiated against him are still pending. The impugned order dated 12-07-2002, cancelling his promotion, was issued without giving notice or opportunity to the petitioner.

He further submits that after he was reinstated into service in pursuance of his acquittal in the criminal case, his promotion has been considered by the respondent-Bank previously on two occasions and he has been promoted two stages and therefore the pendency of the domestic enquiry against him is nothing to do with his promotion and hence there is no justification, whatsoever, to cancel his appointment as JMGS-I Officer. Hence, this writ petition.

A counter affidavit is filed by the respondents stating that in view of certain grave irregularities alleged against the petitioner, he was placed under suspension and a charge-sheet was issued on 24-09-1991 initiating disciplinary action against him. The respondent-Bank issued circular dated 12-07-2002 cancelling the selection of the petitioner, as he was not qualified to be considered for promotion. There is no necessity to give notice or opportunity to the petitioner. The Respondent-Bank was not able to conduct the disciplinary enquiry as the original documents were filed before the C.B.I. Court. After receiving the documents from the C.B.I. Court, the Respondent-Bank issued order on 17-03-1998 for proceeding with the enquiry. The petitioner has to wait till the disciplinary proceedings are concluded and he cannot question the holding of the disciplinary proceedings. Therefore, he prays to dismiss the writ petition.

Learned counsel for the petitioner contended that the petitioner was selected

to the post of JMGS-I Officer by virtue of proceedings dated 01-08-2000, but the same was cancelled by the impugned proceedings dated 12-07-2002 on the sole ground that the disciplinary proceedings are still pending. He further contended that a criminal case is filed against the petitioner for misappropriation in the matter of sanction of loans. The petitioner was acquitted of the charges levelled against him in the criminal proceedings and therefore, the disciplinary authorities revoked the suspension order. The cancellation of promotion without issuing notice to the petitioner is arbitrary and illegal. When the disciplinary proceedings are pending, two promotions were given to the petitioner and therefore he contended that the pendency of disciplinary proceedings is not a ground for cancellation of promotion.

On the other hand, the learned Standing Counsel for the respondents contended that promotion of the petitioner is not communicated to him and selection does not confer any right and that in pursuance of the selection, no posting orders were given. He further contended that from the selection list, the name of the petitioner was deleted and hence there is no violation of the principles of natural justice. He also contended that inadvertently the case of the petitioner was considered for promotion and hence he prays to dismiss the writ petition.

The petitioner, admittedly, applied for promotion in the cadre of JMGS-I Officers when the vacancies have fallen vacant on 01-08-2000. He was issued a hall ticket and he was permitted to write the written test. As the petitioner was successful in the written test, he was called for interview held on 02-03-2002. He was selected in the interview for promotion to JMGS-I Officer by a duly constituted Selection Committee. The first respondent-Bank issued a final list of selected candidates for promotion from clerical cadre to JMGS-I cadre with effect from 01-08-2000, which was prepared in accordance with merit. The name of the petitioner was shown at serial No.17. As per the final list, the selected candidates will be on probation for a period of one year from the date they report for duty. The circular

dated 18-03-2002 was communicated to all the Branch Managers, but the petitioner was not given such communication.

It is the further case of the learned counsel for the petitioner that the name of the petitioner was deleted from the attendance register of clerical staff and he was entrusted with the duties of an Officer and as such he is discharging his duties as an Officer in the State Bank of India. The Branch Manager also obtained medical report from the petitioner as directed by the first respondent. But, as per the impugned proceedings, dated 12-07-2002, the name of the petitioner was deleted from the selection list on the sole ground that disciplinary proceedings are still pending against him. The said action has been challenged solely on the ground that the principles of natural justice have been violated.

The relevant portion of the proceedings of the first respondent, dated 18-03-2002, reads as follows:-

> "The selected employees will be on probation for a period of one year from the date they report for duty at their respective places of posting as officers and will be confirmed with retrospective effect subject to their satisfactory completion of the probation period."

The final list of selected candidates was appended to the circular dated 18-03-2003, where under the name of the petitioner was shown at serial No.17. No notice was given to the petitioner before deleting his name though he was selected by a duly constituted Selection Committee.

It is not in dispute that as the petitioner is alleged to have committed certain serious irregularities, he was placed under suspension by virtue of the proceedings dated 20-01-1989. On 21-03-1994, the petitioner was reinstated into service without

prejudice to the Banks right to take appropriate disciplinary action for the lapses committed by him.

It is not in dispute that the criminal case, which was filed against the petitioner, was ended in acquittal. After acquittal of the charges levelled against him in a criminal case, the petitioner was ordered to be reinstated into service. The respondent-Bank knowing fully well that it has not closed the disciplinary proceedings for the alleged misappropriation, it permitted the petitioner to take part in the promotion process. It is also not in dispute that the respondent-Bank was not able to conduct the disciplinary enquiry as the original documents were filed before the C.B.I. Court. After receipt of the documents from the C.B.I. Court, the respondent-Bank issued order dated 17-03-1998 for proceeding with the enquiry. The criminal case was ended in acquittal. From the year 1994 to 1998, they have not taken any steps to initiate disciplinary proceedings against the petitioner. Immediately, after acquittal of the accused in the criminal case, the respondent-Bank, if so advised, ought to have continued the departmental proceedings against the petitioner, but having waited for a lapse of four or five years, the respondent-Bank ordered to proceed further in the disciplinary enquiry. Therefore, the respondent-Bank knows fully well that it has commenced the enquiry by issuing the order dated 17-03-1998, but whereas the petitioner was permitted to appear for the written test held on 20-01-2002. Even assuming for a promotion, the petitioner was allowed to participate in the written test, the respondent-Bank ought not to have selected him in view of the pendency of the disciplinary proceedings. But, whatever may be the reason, the petitioner's name was shown in the selection list. In pursuance of the selection list, the petitioner was entrusted with the duties of an Officer in the fourth respondent-Bank. It is also specifically stated by the petitioner that his name was deleted from the attendance register of clerical staff. Therefore, the order of the selection list must have been approved by the respondent-Bank and perhaps that is the reason why the name of the petitioner was deleted from the attendance register of clerical staff.

Having allowed to discharge his duties as an Officer, having placed him in the selection list and having given the posting orders for promotion to all other candidates, the respondent-Bank ought to have given notice to the petitioner before deleting his name from the selection list. No doubt, conducting of departmental enquiry by the respondent-Bank is stayed by this court in W.P.No.4195 of 1998, which was filed by the petitioner on the ground that the charges in the criminal case and in the departmental proceedings are identical and, therefore, when he was acquitted in the criminal case, he cannot be issued a charge-sheet for the self same misconduct. Because of that stay order, the respondent-Bank could not proceed with the enquiry. Whether it is inadvertent mistake or not, having enlisted in the selection list, the respondent-Bank ought to have given a notice before deleting the name of the petitioner so as to give reasonable opportunity for explanation. In the similar circumstances, this court in an unreported decision in W.P.No.19189 of 1998 between ***E.JAGANNADHAM*** v. ***THE EXECUTIVE OFFICER, TIRUMALA TIRUPATHI DEVASTHANAM, TIRUPATHI***, held as follows:

> "Secondly, it is well settled proposition of law that if an employee is promoted to a higher cadre after suffering a penalty as a disciplinary measure, the said fact of suffering disciplinary measure should not be put against the employee again when the employer proceeds to consider his case for promotion to the next higher cadre."

The above decision squarely applies to the present facts of the case also. In this case, admittedly, the disciplinary authority issued a charge-memo dated 24-09-1991. So from that date onwards, it is deemed that admittedly enquiry is pending. The respondent-Bank may have taken a decision to proceed further to commence the enquiry by issuing order dated 17-03-1998, but that does not mean the departmental proceedings are pending against the petitioner with effect from 17-03-1998. Departmental enquiry commences from the date of issuance of charge-memo and admittedly the charge-memo has been issued against the petitioner on 24-09-1991. It is not in dispute that thereafter the case of the petitioner was considered for 2 in-

cadre promotions and given the same, as he was found suitable. The respondents filed counter affidavit in W.P.No.4195 of 1998, where under it is stated as follows:

> "It is respectfully submitted that the petitioner was considered for 2 in-cadre promotions and given the same as he was found suitable. The petitioner appeared for the officer post selection along with others and was not successful. The petitioner could not get the officer post as he was unsuccessful and it has got nothing to do with the criminal case or pending domestic enquiry."

Having taken such a stand in the earlier writ petition, now the respondent-Bank cannot turn around and say that in view of the pendency of the departmental proceedings, the name of the petitioner is deleted. Therefore, the action of the respondent-Bank is arbitrary and not fair. When having promoted the petitioner twice, even after commencement of the disciplinary proceedings, the pendency of the departmental proceedings does not come in the way of giving promotions, this court is of the opinion that in the same way, the pendency of departmental proceedings cannot come in the way of the petitioner in giving promotion as JMGS-I Officer. There is no rational or distinction at the time of giving promotion, even though the disciplinary proceedings are pending, and take a different view at the time of another promotion is nothing but arbitrary exercise of power.

Since the petitioner was selected by a duly constituted Selection Committee and the name of the petitioner is appeared in the selection list for all practical purposes, he was given promotion, except for not issuing the consequential order of posting, nothing remains. In such view of the matter, the respondent-Bank ought to have followed the principles of natural justice in deleting the name of the petitioner from the selection list. That procedure has not been followed. Therefore, the impugned proceeding suffers from serious legal infirmities. Hence, circular letter No.DO/P&HRD/75/2002-2003, dated 12-07-2002, is quashed.

Accordingly, the writ petition is allowed. However, this order will not preclude the respondent-Bank for taking appropriate action or to take a decision, after giving a reasonable opportunity to the petitioner, in accordance with the rules governing under the service conditions of the petitioner.

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-07-2005

Prv

To

1 The Chief General Manager,

State Bank of India,
Local Head Office, Hyderabad.

2 The General Manager (Dev. & Per. Banking)

State Bank of India, Local Head Office, Hyderabad.

3 The Asst. General Manager (Dev. & Per. Banking)

State Bank of India,
Local Head Office, Hyderabad.

4 The Branch Manager, State Bank of India,
Battala Bazar Branch, Warangal.

5 Two CD copies.